



March 15, 1999

Mr. Ajay R. Shah
Assistant City Attorney
Criminal Law and Police Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR99-0725

Dear Mr. Shah:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122826.

The City of Dallas Police Department (the "city") received a request for information relating to a traffic incident involving a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information as required by section 552.301(b).

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter dated February 16, 1999, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue is public information.

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978).¹ You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that, except for the information discussed below, the information must be released to the requestor.

The submitted documents include accident reports. The Seventy-fifth Legislature repealed article 6701d of the Texas Civil Statutes and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon) (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.²

¹We note that the distribution of confidential information is a criminal offense. Gov't Code § 552.352.

²Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

. . . .

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

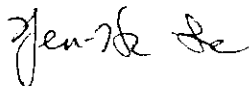
- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident.

V.T.C.S. art. 6701d, § 47(b)(1). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* The information is otherwise confidential. If the requestor has supplied the requisite two pieces of information, you must release the accident reports to the requestor.

Lastly, we note that the remaining documents contain information protected from disclosure by section 552.130 of the Government Code. Section 552.130 excepts information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We have marked the section 552.130 information that you must withhold.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/GLG/nc

Ref.: ID# 122826

Enclosures: Submitted documents

cc: Mr. Rick Camp
3232 McKinney Avenue, Suite 1160
Dallas, Texas 75204
(w/o enclosures)